



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/161935

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephonic hearing was held on December 16, 2014.

The issue for determination is whether petitioner was overpaid FS due to an intentional program violation (IPV).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Patricia Delessio
230 West Wells Street, Room 800
Milwaukee, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nadine Stankey, Card Trafficking Agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS from at least April 19, 2014 through May 15, 2014.

3. On August 7, 2014, the Department of Health Services (DHS) issued to the petitioner 1) a Waiver of Administrative Disqualification Hearing, 2) a cover letter stating that they had conducted an investigation and found that she committed an intentional program violation (IPV), and 3) a Charge and Summary of their evidence, which included a Misuse Claim Amount/Transaction Summary showing the FS used from April 19, 2014 through May 15, 2014 with petitioner's FS card. See Exhibits A-1 and A-2.
4. On August 18, 2014 the DHS received the signed Waiver of Administrative Disqualification Hearing from the petitioner. See Exhibit A-1.
5. By a notice dated September 16, 2014 the agency informed petitioner that she was overpaid \$870.46 in FS (claim no. [REDACTED]) for the period of April 19, 2014 through May 31, 2014 due to "trafficking misuse due to Intentional Program Violation."

DISCUSSION

An FS overpayment occurs when FS benefits are overpaid to a recipient or when FS benefits are trafficked by an FS recipient. 7 CFR 273.18(a)(1). The State FS agency must establish and collect any FS overpayment claim. 7 CFR 273.18(a)(2). There are three types of claims: (1) Intentional Program violation (IPV) claim, (2) Inadvertent household error (IHE) claim, and (3) Agency error (AE) claim. 7 CFR 273.18(b). See also, in accord, *FS Wisconsin Handbook (FSWH)*, §7.3.2.5 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.)

Here, the DHS has alleged an IPV overpayment claim against the petitioner. An IPV claim is defined as any claim for an overpayment or trafficking resulting from an individual committing an IPV. 7 CFR 273.18(b)(1). In this case, the agency has alleged that petitioner trafficked her FS by selling her FS card to a store. Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by: (1) the individual's admission; (2) adjudication; or (3) the documentation that forms the basis for the trafficking determination. 7 CFR 273.18 (c)(2).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or

consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR §271.2.

The agency determined the value of the trafficked benefits to be \$870.46 because that is the amount of the FS used during the period of April 19, 2014 through May 15, 2014 with her FS card. This was because petitioner's FS card was issued on April 15, 2014 and confiscated from the store owner on May 30, 2014. As stated above, the federal regulations state that claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by: (1) the individual's admission; (2) adjudication; or (3) the documentation that forms the basis for the trafficking determination. 7 CFR 273.18 (c)(2).

First, I cannot find that petitioner has admitted to any trafficking or overpayment of FS. Her direct testimony was that she did not sell her card. Her signed statement states that she did not sell her card. See Exhibit A-5. Further, her signed waiver cannot be construed to be an admission when she did not "check the box" on the waiver form admitting to the facts. Second, the matter was not adjudicated through an IPV hearing. Thus, the value of the trafficked benefits must be determined through the documentation that forms the basis for the trafficking determination. Presumably, the documentation that forms the basis for the trafficking determination is the evidence presented by the agency at this hearing: 1) the Waiver of Administrative Disqualification Hearing, 2) the cover letter stating that they had conducted an investigation and found that she committed an IPV, 3) the Charge and Summary of their evidence, which included a Misuse Claim Amount/Transaction Summary showing the FS used from April 19, 2014 through May 15, 2014 with petitioner's FS card, and 4) petitioner's signed statement stating that she did not sell her card. See Exhibits A-1, A-2, and A-5.

The DHS representative at hearing testified that because petitioner had given her varying stories about what happened to her FS card (first it had been stolen and then it had fallen out when she was at the store in question) and because petitioner's FS card was issued on April 15, 2014 and confiscated from the store owner on May 30, 2014, that the representative made a judgment call to use those two months of FS usage to establish the amount of the overpayment claim.

While petitioner's actions and finding her card in the store owner's possession may arouse suspicion, this is not the same as establishing the amount of the overpayment. The representative testified that in other cases with this particular store owner they had found that he had used his "perk card" with [REDACTED] when he had used other FS cards fraudulently. This obviously would link their FS cards to the owner and the FS used. Here, we do not have that evidence and the agency agreed they did not have it. The usage history shows that during the relevant timeframe the card was used at the store in question, as well as several others. We also have no evidence to show that petitioner sold her card to the store owner to establish some claim value that way. With all due respect, making a judgment call about the value of the claim is not the same as presenting documentation that forms the basis for the trafficking determination.

The agency also appears to be arguing that because the Charge and Summary referenced the amount of the overpayment, that when petitioner signed the waiver, she was admitting to that amount. The Charge and Summary states, "Based on these transactions [finding the petitioner's card at the store in question], it is suspected that \$870.46 of Wisconsin FoodShare benefits have been misused or trafficked on 4/19/14-5/15/14." See Exhibit A-2. The agency then attached the spreadsheet showing the FS usage during that timeframe. Again, we have proof problems. The agency's own statements therein say the amount is "suspected" – not established in some way, and the waiver form does not show she admits to the facts. I also note that petitioner's FS card was used at 3 different stores other than the store in question for the first four transactions during this time period. I therefore query when the alleged trafficking began with the store in question to establish an overpayment "begin date". There is no evidence to suggest the alleged trafficking started in April. It could be just as likely under this alleged scenario that she sold the card on May 30th when they found it in the store owner's possession, and he never got a chance to use it.

The agency has the burden of proof in this matter. Based on the foregoing, I must find that the agency has not met it.

CONCLUSIONS OF LAW

The agency has not met its burden of proof to show that petitioner was overpaid FS due to an IPV.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind the FS overissuance Claim # [REDACTED] and to cease all collection or recovery activities based upon the claim, had such collections begun. These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

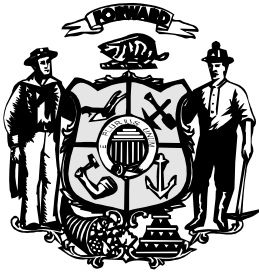
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of January, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 15, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Patricia Delessio